



GABRIEL P. HARVIS  
BAREE N. FETT

October 7, 2015

**BY ECF**

Honorable Katherine B. Forrest  
United States District Judge  
Southern District of New York  
500 Pearl Street  
New York, New York 10007

Re: *Holmes v. City of New York, et al.*, 14 CV 10232 (KBF)

Your Honor:

I represent plaintiff in the above-referenced civil rights action. I write pursuant to § 2(F)(iii) of the Court's Individual Practices and Fed. R. Civ. P. 37(b)(2)(A) and 37(a)(3)(B)(iii)-(iv) to respectfully request **an order compelling defendants to comply with the Court's prior order dated September 17, 2015. The parties also jointly request referral to the Hon. Andrew J. Peck for settlement purposes.**

Following unopposed letters from plaintiff dated September 1, 2015 and September 11, 2015, the Court issued an order dated September 17, 2015 waiving defendants' objections to plaintiff's first set of discovery demands and directing defendants to "provide the discovery sought no later than Thursday, October 1, 2015." *See* ECF nos. 27-30. Plaintiff has not received a single document or interrogatory response since the Court issued its September 17<sup>th</sup> order. Indeed, defendants have not produced a single document since they served their initial disclosures on June 18, 2015.

The fact discovery deadline in this matter expires in 37 days. As set forth in plaintiff's September 1<sup>st</sup> letter motion, plaintiff has undertaken diligent efforts – beginning on the date of the initial conference and continuing through yesterday – to obtain sufficient discovery from defendants to identify all appropriate parties and eyewitnesses, marshal the relevant evidence and schedule and conduct fact depositions.

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For their part, defendants' participation in discovery has consisted solely of serving boilerplate discovery responses on September 15, 2015, 34 days after their deadline to respond expired. Those responses consist entirely of objections, without providing any substantive response (or any documents). Even following this Court's September 17<sup>th</sup> order and repeated requests from plaintiff's counsel, defendants have failed to produce any of the material requested or to supplement their deficient responses to provide substantive information in accordance with this Court's mandate.


At this point, defendants' inaction has prejudiced plaintiff by making it extremely difficult for him to complete discovery by the deadline. In a series of meet and confer phone calls and e-mails, the undersigned has outlined the outstanding material and attempted to move the process forward. Regrettably, defendants have done nothing, despite assurances from defense counsel that amended responses and outstanding documents would be produced by the end of last month.

Plaintiff attempted to resolve this dispute during a phone call with defense counsel yesterday afternoon. The parties were unable to resolve the dispute with respect to the production of documents and amended responses, but agreed to submit the instant joint request for a settlement conference before the Hon. Andrew J. Peck.

Accordingly, plaintiff respectfully requests **an order compelling defendants to comply with the Court's prior order dated September 17, 2015 by a date certain. The parties also jointly request referral to the Hon. Andrew J. Peck for settlement purposes.**

Thank you for your consideration of this request.

Respectfully submitted,



Gabriel P. Harvis

cc: ACC Pernell M. Telfort, Esq.